*** APPENDIX ***

CONSTITUTIONAL PROVISIONS

Article 1 Sect. 1 Clause 1.: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
Article 1 Sect. 7: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; If he approves he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Article 1 Sect. 8 Clause 1: (The Congress shall have power) To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article 1 Sect 8 Clause 12: (The Congress shall have power) To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years.

Article 1 Sect 9 Clause 7: No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Amendment Four: (applicable parts) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated - - -.

Amendment Five: (applicable parts) No person shall --- be deprived of life liberty, or property without due process of law

Amendment Ten: (applicable parts) The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATUTES

Title 26 USCA sect 1 et seq. Not set out.

Title 26 USCA sect. 7421 (a): Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

Title 26 USCA sect 7422 (a): No suit or proceeding shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with

the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

Jurisdictional Statutes

Title 28 USCA sect. 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 USCA sect. 1340: The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

Title 28 USCA sect. 1343 (4): The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1), (2), and (3): not applicable

(4). To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 28 USCA sect. 1361: The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Title 28 USCA Sect. 2201: In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Fiscal Statutes:

Title 31 USCA Sect 66b (a): The Secretary of the Treasury shall prepare such reports for the information of the President, the Congress, and the public as will present the results of the financial operations of the Government; *Provided,* That there shall be included such financial data as the Director of the Office of Management and Budget may require in connection with the preparation of the Budget or for other purposes of the Office. Each executive agency shall furnish the Secretary of the Treasury such reports and information relating to its financial condition and operations as the Secretary, by rules and regulations, may require for the effective performance of his responsibilities under this section.

Title 31 USCA Sect. 1029: It shall be the duty of the Secretary of the Treasury annually to lay before Congress, on the first day of the regular session thereof, an accurate, combined statement of the receipts and expenditures during the last preceding fiscal year of all public moneys, including those of the United States Postal Service, designating the amount of the receipts, whenever practicable, by ports, districts, and States, and the expenditures, by each separate head of appropriation.

Title 50 USCA CIA Statutes sect. 403f (a) (pertinent part) In the performance of its functions, the Central Intelligence Agency is authorized to:

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended

for the purposes and under the authority of sections 403a - 403j of this title without regard to limitations of appropriations from which transferred; - - -

Note: **Title 31 USCA Sect. 66b** was passed subsequent to above.

Title 50 USCA Sect 403j(b): The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures *to be accounted for solely on the certificate of the Director* and every such certificate shall be deemed a sufficient voucher for the amount therein certified. (underlining supplied)

THE AMENDED COMPLAINT

Usual Heading - Civil Action Western District of Pennsylvania No. 80-503

1. Jurisdiction is founded on *Title 28 USCA section 1331* (Federal Question); *Title 28 USCA section 1361* (Mandamus to Compel Government Official); *Title 28 USCA section 1343 (4)* (Equitable Relief under Civil Rights Statute); and *Title 28 USCA section 1340* (Any Act of Congress under Internal Revenue Statute).

2. Jurisdiction is further founded on *Title 28 USCA section 2201* and applicable to any Declaratory Relief demanded herein; and, should the Court determine that this action, in part, is a judicial review of agency action, *Title 5 USCA section 703 and 702* would be jurisdictional.

3. The following constitutional provisions, when taken together, proscribe the delegation by Congress of Authority to raise revenue for, or to draw public money from, the Treasury:

Article 1 Section 7 Clause 1 (Bills for Raising Revenue)
Article 1 Section 7 Clause 2 (How a Bill becomes Law)
Article 1 Section 9 Clause 7 (No Money to be drawn except by Bill of Appropriation)

The legislative power emanating from Article 1 Section 1 Clause is modified and restrained by the above constitutional provisions and Article 1 Section 8 Clause 7 (the Taxing and Spending clause). Raising revenue and drawing money from the Treasury, as a legislative function, are inseparable as to faithful performance. Betrayal of a limitation on one is a betrayal of both.

4. Under the provisions of Article 1 Section 8 Clause 1 (Taxing and Spending), only the Congress of the United States can decide by a Bill or Appropriation whether public money is to be spent to pay the debts of the United States and to provide for the Common Defense and the General Welfare.

5. The Federal Income Tax Law (*Title 26 USCA section 1 et seq*) is unconstitutional in that it confiscates the income of taxpayers through surreptitious funding of government agencies; its complicated nature lends itself to manipulation by the Internal Revenue Service with both the law and its administration exuding lack of uniformity and fairness; it taxes unjustly requiring citizens to pay into a system that fraudulently reports outgo; and it specifically confiscates the property of the plaintiff by financing clandestine operations of Executive agencies under control of the CIA directed at him personally.

6. Title 50 USCA sect. 403f (a) of the Central Intelligence Agency Act is constitutionally repugnant in that:

(a). it delegates authority to the Office of Management and Budget to determine what are debts of the United States and what constitutes the spending of public money in providing for the common Defense and General Welfare.

(b). it has funded since 1949 a para-military organization without a Bill of Appropriation passed by Congress and violates Article 1 Section 8 Clause 12 (prohibiting an appropriation for armies to cover more than 2 years) as a limitation on Article 1 Section 8 Clause 1, the Taxing and Spending clause.

(c). it frustrates the purpose of the Accounting and Reporting clause of Article 1 Section 9 Clause 7 as a limitation

on Article 1 Section 8 Clause 1 is and promotes the concept that Congress intended a completely new set of rules governing appropriations and reporting of receipts and expenditures of the Intelligence community.

7. Title 31 USCA sect. 1029 (Fiscal) is unconstitutionally vague and ambiquous and violates Article 1 Section 9 Clause 7 because it requires all public moneys to be set out only under "each separate head of appropriation." Since the CIA and other secretly funded agencies have no appropriation designated by Congress, the transfers to them are fraudulently covered up by the head of appropriation from which the funds are transferred.

8. Title 50 USCA sect. 403j (a) is fatally defective as a Bill of Appropriation because it sets out no amounts for the CIA to receive and has no time limit. This statute became effective in June, 1949 and has unconstitutionally and fraudulently funded the CIA ever since.

CIA VIOLATES OWN CHARTER

9. Title 50 USCA sect. 403j (b) provides for fiscal reporting by the CIA which it summarily disregards. Certificates of the Director simply are not submitted. The constitutionality of this provision is questionable.

CIVIL RIGHTS

10. Title 31 USCA section 66b (a) (Money and Finance) is a *Civil Rights* statute protecting the right of the public and the plaintiff to know how public money is spent and what agencies receive public money for the purpose of negotiating the transformation of that money to non-public status. The public - and the plaintiff - is assured the right to make an independent decision on whether the transition was worth the cost and in the public interest. This statue expresses and projects the constitutional concept of Article 1 Section 9 Clause 7 even though a constitutional limitation is self-implementing.

11. Certain members of Congress conspire with the Treasury, the Office of Management and Budget, and the CIA to keep other members of Congress and the public from knowing the funding amounts and expenditures for the CIA. This creates a small cadre of inside-dopesters within Congress who think they are being told the truth about disposal of public moneys; it also destroys the "one Congressman - one vote" concept and violates the separation of powers doctrine. The practice violates Congress' own criminal code: Title 18 USCA sect. 241.

12. Since the inception of the CIA in 1949, approximately 350 Billion dollars have been transferred from other agencies with ostensibly legitimate appropriations to secret accounts supporting secret unreported operations to be hidden forever from the public. This continues even though these secret operations eventually come home to haunt the American People; such as, the hiring of criminals to assassinate, collaboration with international corporations, collaboration with CREEP; and collaboration with self-serving foreign dictators and monarchs. Transfers to these secret accounts do not destroy the identity of the money as public money but is so classified by the Treasury even though these accounts are kept on Treasury books at taxpayer's expense.

13. The power to legislate money bills in a fool's paradise has never been committed to the Federal Government and, whether raising revenue or appropriating public money, the Bill is defective because Congress is devoid of power. This power has reverted to the States or to the people under provisions of Amendment Ten and the Federal power is nullified completely relative to collection of taxes from individual citizens until they are assured that the reporting of the receipts and expenditures of all public money to them and their elected officials is true and correct. *No other interpretation of our Constitution makes any sense.*

14. The covering up forever of the funding, expenses, and excesses of a dangerously unstable organization with unprecedented power under our form of government is ridiculous. This legislative naivete has enabled the CIA to feel secure and

undetectable as to any operation even against an American citizen. From 1969 to the present, such an operation has been maintained against the plaintiff designed to thwart his economic development and so sophisticated as to avoid outright detection.

15. The plaintiff first filed in Federal District Court November 16, 1967 attacking the unconstitutional reporting engendered by the CIA Act of 1949. He has been in constant litigation since then over this anomaly and the degenerative effect if it has had on government and the economy. He is appalled that he has been unable to get a determination on the merits.

16. The Plaintiff was fired from employment in 1969 because of the CIA litigation; was unable to find employment for over a year; and for ten years now has worked at employment in a remunerative category inappropriate to his background qualifications. He has been embarrassed by discrimination, denied due process, and has suffered depletion of savings and property because of the vendetta against him by the defendants.

17. The plaintiff has been in litigation with the Commissioner of Internal Revenue for several years now in tax court. The issue involves taxes for the years 1971, 1972, 1973 and 1974 and the authority of the IRS to demand reports and/or payments of tax. On January 10th, 1980, the Tax Court rendered a decision. On March 12th, 1980, the IRS sent plaintiff a bill twice as large as the Court indicated was due. On May 19th, 1980, the Greensburg defendant delivered to the receptionist in the Controller's office of plaintiff's employer a levy on wages $900.00 less than the billing on March 12th. The plaintiff has received no detailed explanation of how the IRS arrives at amounts owed.

18. Although part of the IRS assessment purports to be interest charges, no interest would be applicable prior to the Tax Court decision. No part of the Tax Court decision encompassed back-dated interest and no such interest is chargeable because no tax was due until the decision:

(a). the plaintiff submitted no reports and gave timely notice to the IRS with explanation similar to this complaint

set out in a letter dated April 4th, 1972 and addressed to Commissioner Walters.

(b). in that letter, the plaintiff stated that he owed no tax and demanded that money deducted from his wages be returned to him.

(c). if he had submitted on-time reports in the usual manner under an unconstitutional tax law, no tax would have been due over and above his deductions from pay because of his low income.

(d). the IRS could have taken other action based on the letter of April 4th, 1972; instead, it chose to raise the issue of whether plaintiff owed any tax - a controversy it could draw out indefinitely and, unknown to plaintiff, the IRS would be planning to add interest and other padding while plaintiff continued to struggle in a losing battle against inflation. This latter was also known to the IRS. The plaintiff resisted the IRS contentions of tax.

CRIME CODE VIOLATION

19. Title 18 USCA sect. 643 makes it a criminal offense for a public official to receive public money he is not authorized to retain as salary, pay or emolument, and who fails to render his accounts for the same as provided by law. The CIA renders no accounts for congressional or public consumption. Other criminal statutes are violated; Title 18 USCA sect 643, 644, 649, 651, 1001, 1018 and 2073. Such criminality is repugnant to Article 1 Section 8 Clause 1 and its limitating clauses in addition to violating the CIA Act and is injurious to this plaintiff.

PUNITIVE DAMAGES

20. A conspiracy to deprive or stifle economic growth of an American citizen by very powerful Executive units acting through stealth and demagoguery assisted by a coordinate branch of government and maintained by plaintiffs payments to government without accounting therefore is a seizure of property oppressive

under Amendment Four to the Constitution and a denial of the due process provisions of Amendment Five. Punitive damages would be in order.

PRAYER FOR RELIEF

21. That the District Court issue a Declaratory Judgment having the force and effect of law that the Federal Income Tax Law, Title 26 USCA sect. 1 et seq is unconstitutional because:

A. Congress extracts payment from individual taxpayers who make up the public in general and fraudulently accounts to them contrary to constitutional provisions which guarantees them an honest accounting.

B. Congress extracts payment from individual taxpayers - who may be classified as "the people" - when it has abdicated its responsibility for legislating relative to the debts, general welfare and common defense contrary to the basic guarantees of the Constitution that it will do so in protection of the people of the United States.

22. That the District Court issue a Declaratory Judgment having the force and effect of law that the following statutes are unconstitutional:

A. Title 50 USCA sect. 403f (a).
B. Title 50 USCA sect. 403j
C. Title 31 USCA sect. 1029

23. That the District Court issue a Declaratory Judgment having the force and effect of law that:

A. the Congress of the United States does not have the plenary power to falsify the accounting and reporting system of the United States Government and that such plenary power to exact any reporting and accounting it considers appropriate to the public interest must be governed by what the Constitution says is an accounting and reporting in the public interest.

B. reasonably reflects the allegations of this complaint.

24. That the District Court issue a Mandamus:

A. to the Secretary of the Treasury to publish an honest and true accounting and reporting document to the plaintiff that will present the financial operations of the United States Government for the years 1971, 1972, 1973, and 1974 as the Constitution and the laws prescribe before he is obligated to make any further payment to the IRS for the years in question.

B. to the Internal Revenue Service to correct its bill presented the plaintiff in the amount of $6,864.53 and to issue a demand consistent with the Tax Court's decision of January 10th, 1980 adding thereto no additional interest or other padding except that which would reflect a demand in accordance with a voidable Income Tax Law.

C. to the defendants to cease and desist from making contacts relative to the plaintiff or conducting any surveillance or otherwise doing anything suggesting plaintiff's disloyalty to the United States or its Constitution; and, particularly, to expunge all secret records reflecting any such suggestion.

25. that the District Court grant plaintiff such other, additional or alternative relief as may appear to the Court to be equitable.

26. That the District Court grant plaintiff his costs and other expenses herein computed back to November, 1967 as a punitive measure.

PRELIMINARY RESTRAINING ORDER

27. That the Court issue a Preliminary Restraining Order to the defendant MISKANIC and the Controller of Westmoreland County temporarily restraining the activation of the illegal levy against the plaintiff scheduled to begin with the June 6th, 1980 pay check. Such Order to remain in force until the issues of this case and the legality of the levy itself, including service thereof, are resolved.The levy as now set up would allow the plaintiff only

$50.00 per week to support himself, his wife, and daughter. The plaintiff has no substantial reserve of cash that would carry him more than two weeks with the levy in force.

RELIEF IN THE ALTERNATIVE

28. The plaintiff deems the foregoing relief to be of greater consequence to him than a money judgment but failing definitive action on the merits of the Declaratory Judgment, Mandamus, Civil Rights, Equitable and Restraining Order issues, the plaintiff demands in the alternative that a jury be empaneled to try the case for damages. Damages will be substantial.

WILLIAM B. RICHARDSON
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WESTERN DISTRICT OF PENNSYLVANIA
USUAL HEADING **C.A. 80-503**
(No. 81-1392 in Court of Appeals)

MEMORANDUM

Ziegler, District Judge

This is a civil action for multifaceted relief predicated on two distinct theories. First, William B. Richardson challenges the computation of his tax liability by the Internal Revenue Service for the years 1971-74. Second, plaintiff asserts that Section 403f (a) of the Central Intelligence Agency Act[1] , which authorizes funding for that agency by secretive means, is constitutionally infirm. Presently before this court is the motion of defendants for dismissal or judgment pursuant to Rules 12 (b) (6) and 56 (b) of the Federal Rules of Civil Procedure. The Rule 12 (b) motion must be granted and the original and amended complaints dismissed for want of

[1] 50 U.S.C. sect. 403a et seq.

jurisdiction with respect to the tax claim and because Mr. Richardson has no standing to challenge the method of funding for the Central Intelligence Agency.

(A) The Tax Claim

William B. Richardson assails the computation of this tax liability by the Internal Revenue Service following a decision by the United States Tax Court. *Richardson v. Commissioner, 72 T. C.* 818 (August 9, 1979). On March 12, 1980, the Commissioner computed the taxpayers liability with interest for the years 1971-74. Plaintiff asserts the assessment is inaccurate and inflated.

This court is without jurisdiction to entertain this dispute since plaintiff has an adequate administrative remedy, 26 U.S.C. sect. 7422 (a) and 28 U.S.C. sect. 1346 (a), and the action is barred by the doctrine of sovereign immunity. Although relief is sought against individual defendants, the thrust of the claim is against the United States Treasury and, as such the sovereign is immune absent statutory consent. See, *Malone v. Bowdoin,* 369 U.S. 643 (1962); *Larson V. Domestic and Foreign Corp.*, 337 U.S. 682 (1949). No such consent is present. Moreover, the fact that plaintiff is seeking mandamus, declaratory and injunctive relief does not establish federal question jurisdiction. See, 28 U.S.C. sect. 2201.

Section 7421 (a) of the Internal Revenue Code of 1954, with exceptions not here relevant, provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."[2] The purpose of the statute "is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of taxes." *Enochs v. William Packing Co.*, 370 U.S. 1, 5 (1962). Jurisdiction may be present only in those situations in which "under no circumstances could the Government ultimately prevail" on the tax claim. 370 U.S. at 6. Even there the plaintiff must satisfy the equitable test of irreparable harm and want of adequate remedy at law. *Id.*

[2] 26 USCA Sect. 7421 (a)

We cannot say that, based upon the information available to it, the Department of Treasury does not have a good faith belief in the accuracy and enforceability of its claim. Nor can we conclude that there are no cicumstances under which the Internal Revenue Service may prevail against Mr. Richardson.[3]

(B) The Constitutional Questions

William B. Richardson seeks to perpetuate his prominence as a federal litigator[4] by challenging as *constitutionally infirm* various enactments of Congress, particularly section 403f (a) of the Central Intelligence Agency Act, 50 U.S.C. sect 403 et seq. Defendants respond with the assertion that all contentions are barred by the doctrines of res judicata or direct estoppel. We disagree because, although plaintiff has devoted many years to litigating similar questions involving the Act, no court has determined his standing to challenge section 403f (a).

That section enables the Central Intelligence Agency to receive secret appropriations which are transferred from other agencies. Plaintiff argues that section 403f (a) is unconstitutional for the following reasons: (1) it improperly delegates authority to withdraw public money from the treasury to the Office of Management and Budget; (2) it authorizes funding for a "para-military organization" in violation of Article I, Section 8, Clause 12; and (3) it violates the Statement and Account Clause of Article I, Section 9, Clause 7 of the Constitution. Plaintiff claims standing based on citizenship, civil rights, as a taxpayer and personal stake.

[3] We note that following the institution of this suit the Revenue Service has conceded inadvertant error in the original computation and the assessment is being revised.

[4] *United States v. Richardson*, 418 U.S 166 (1974); *Richardson v. Sokol*, 285 F. Supp. (W.D. Pa. 1968) aff'd without opinion, 409 F. 2d 3 (3rd Cir. 1979); *Richardson v. Spahr*, 416 F. Supp. 752 (W.D. Pa. 1976).

The first two grounds are foreclosed by *United States v. Richardson*, 418 U.S. 166 (1973). The Supreme Court has held a citizen does not have a sweeping right "to employ a federal court as a forum in which to air his generalized grievances about conduct of government." Id. at 175. Furthermore, we are satisfied that the invocation of a citizen's "civil rights" is insufficient to establish standing to challenge the method of funding of any federal agency.

The more nettlesome question concerns plaintiff's standing as a taxpayer or because of some "personal stake" to challenge the funding of the Central Intelligence Agency. At the core of any standing question is the requirement that a litigant demonstrate some "injury in fact". Trice, *American Constitutional Law*, at 80 (1978). A party must allege as a prelude "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult -- questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962).

The supreme court in *Frothingham v. Mellon*, 262 U.S. 447 (1923) and *Flast v. Cohen*, 392 U.S. 83 (1968) addressed the question of standing to challenge legislative enactments. The Court articulated a two-pronged test:

> First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. 1, sect 8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute -- Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply

> that the enactment is generally beyond the powers delegated to Congress by Art. 1, sect 8. When both nexuses are established, the litigant will have shown a taxpayer's stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court's jurisdiction.

392 U.S. at 102-103.

Although the test appears to be compact, it has engendered confusion[5] which is compounded by *United States v. Richardson*, supra. There the Court held that the taxpayer, the instant plaintiff, failed to establish standing under *Flast*. However, the reasoning was equivocal at best:

> Although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing or spending power, but to the statutes regulating the CIA, specifically 50 U.S.C. sect. 403j (b) —
>
> Respondent makes no claim that appropriated funds are being spent in violation of a 'specific constitutional limitation upon the — taxing and spending power — 392 U.S. at 104. Rather, he asks the courts to compel the Government to give him information on precisely how the CIA spends its funds. Thus there is no 'logical nexus' between the asserted status of taxpayer and the claimed failure of the Congress to require the Executive to supply a more detailed report of the expenditures of that agency.

418 U.S. at 175.

Courts and commentators have encountered difficulty in determining which prong was found wanting. Some have referred to the failure to allege a taxing and spending violation.[6] Others have referred to the want of a spending power

[5] See, Note, Taxpayer Standing in the Wake of Flast v. Cohen, 31 Dick L. Rev. 495 (1977).

[6] *Id.*

transgression.[7] Still others have improperly concluded that any taxpayer grievance which is "common to the public" is fatally defective.[8]

We will articulate our understanding of the applicable principles. A federal court must first determine whether a taxpayer meets the test of *Flast*. The initial prong requires an allegation of some specific violation of the Taxing and Spending Clause of Article 1, Sect 8, which is merely a variation of the "injury in fact" requirement mandated by Article III.

Next the court must determine whether the taxpayer has established a "logical nexus between the status (or interest) asserted and the claim sought to be adjudicated." 392 U.S. at 102. Here a plaintiff must point to some specific statutory or constitutional limitation on the power to tax and spend, and to show that the limitation was designed to limit the expenditure under attack.

This second tangent ensures that the taxpayer is one for whom the statutory or constitutional provision was designed to protect. Unlike the first prong, it is not constitutionally mandated. It is merely a jurisprudential limitation designed to sharpen the presentation of difficult issues.[9]

If a plaintiff fails to meet both prongs of *Flast*, a district court must still consider whether the plaintiff has shown some "injury in fact" apart from his status as a taxpayer. Mere "generalized grievances which are common to all members of the public" will not

[7] *See, Boesel v. Schultz*, 388 F. Supp. 771 (S.D. Ohio 1975); *Civil Awareness of America v. Richardson*, 387 F. Supp. 1086 (E.D. Wis. 1975)

[8] *Halpern v. C.I.A.*, 629 F. 2d 144, at 152 (D.C. Circuit 1980)

[9] Tribe, *American Constitutional Law* at 98-99; *cf.*, *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

suffice. *United States v. Richardson*, 418 U.S. at 176-177. Some "personal stake in the outcome" must be alleged in order to warrant standing based on "injury in fact." *Baker v. Carr*, 369 U.S. at 204.

Applying these principles to the instant case we conclude that plaintiff's original and amended complaints must be dismissed. To be sure Richardson has averred a violation of the Taxing and Spending Clause; however, mere choice of words is not sufficient to create standing. The test is whether some specific expenditure has been challenged which is allegedly improper. We conclude that plaintiff has failed to satisfy the first prong of *Flast* following the Supreme Court's decision in *Richardson*.

Plaintiff is not challenging any specific congressional expenditure or asserting want of legislative power under the Taxing and Spending Clause. In essence, he is demanding knowledge of congressional allocations to the Central Intelligence Agency in order to dispute disbursements that he believes may violate the Clause. Such an indirect challenge does not establish standing for "although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing and spending power but to the statutes regulating the CIA -- "*United States v. Richardson*, 418 U.S. at 175.

Further, in our judgment, plaintiff's allegations fail the second prong of *Flast* because he has failed to point to some specific or constitutional limitation of congressional power to tax or spend for the expenditures at issue. The Statement and Account Clause does not so delimit as asserted by plaintiff and therefore it conveys no. standing as a taxpayer. Id. at 175.

The final question is standing under the "injury in fact" theory. Does plaintiff have some personal stake in the outcome or stand to suffer some "particular, concrete injury" as a result of section 403f (a)? We conclude that he does not.

Allegations of dilution of voting power, inability to obtain

legislative representation, economic injury due to fiscal manipulations and secret expenditures, do not reach the level of concreteness required to establish injury in fact. They are "generalized grievances" which are "common to all members of the public." *Richardson* at 176-177.[10] It follows that since plaintiff has no standing to challenge the funding provisions with respect to the Central Intelligence Agency, *a fortiori*, he lacks standing to challenge 26 U.S.C. sect 1 et seq and 31 U.S.C. sect 1029 which allegedly contribute to the "impermissible purpose" of the Act.

In conclusion, we hold that the constitutional objections of plaintiff must be rejected for want of standing. The teachings of the Supreme Court make clear that a taxpayer is simply not a proper party to raise the instant questions due to the unique nature of the Central Intelligence Agency. This court does not reach the merits of the claim that section 403f (a) violates the Statement and Account Clause for the reason that the plaintiff's original and amended complaints must be dismissed.

An appropriate order will follow.

Dated: December 22,, 1980

[10] For the same reasons, plaintiff lacks standing to challenge sections 403j (a) or (b) of the C.I.A. Act.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 81-1392

WILLIAM B. RICHARDSON, Appellant

v.

G. WILLIAM MILLER, Secretary of the Treasury; STANSFIELD TURNER, Director, Central Intelligence Agency; JAMES T. McINTYRE, JR., Director, Office of Management and Budget; JEROME KURTZ, Commissioner, Internal Revenue Service

On Appeal from the United States District Court
for the Western District of Pennsylvania
C.A. No. 80-0503

Submitted Under Third Circuit Rule 12(6)
April 20, 1982

Before: ADAMS, VAN DUSEN and WEIS, Circuit Judges.

JUDGMENT ORDER

After considering all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgement of the district court be and is hereby affirmed.[1]

Cost to be taxed against appellant.

BY THE COURT,

Circuit Judge

ATTEST:

Betty J. Robinson, Deputy Clerk

DATED: April 28, 1982

[1] - Note continued on the next page

[1] Continuation of Order, Third Circuit, dated April 28, 1982

[1] It is noted that the affidavits of Don I. Wortman and Gilbert L. Kujawa, included in an appendix to the Government's brief in this court, were appended to the Government's memorandum in support of the Government's motion to dismiss the complaint. This memorandum was attached to and incorporated in the Government's motion to dismiss the complaint, which was docketed in the district court on July 7, 1980, and served on the plaintiff on July 3, 1980, according to the certificate of service. These affidavits have been available to both the plaintiff and the district court since the time such motion was served. Copies of the affidavits are reproduced in the Government's brief filed in this court at pp. 1a-4a of that brief, as noted above.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 81-1392

WILLIAM B. RICHARDSON, Appellant

v.

G. WILLIAM MILLER, Secretary of the Treasury et al

On appeal from the United States District Court
for the Western District of Pennsylvania
C.A. No. 80-0503

Before: Seitz, Aldisert, Adams, Gibbons, Hunter, Weis, Garth Higganbotham, Sloviter and Becker

Court en banc

Rehearing denied.

BY THE COURT,

Circuit Judge

ATTEST:

Deputy Clerk

DATED: May 24th, 1982

SUPREME COURT OF THE UNITED STATES

No. A-176

WILLIAM B. RICHARDSON, Petitioner

v.

C. WILLIAM MILLER, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of petitioner
It is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 20, 1982

/s/ William J. Brennan, Jr.

Associate Justice of the Supreme Court of the United States

DATED: August 20th, 1982